

EXHIBIT 4



**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

) **MDL No. 1456**
) **Master File No. 01-12257-PBS**
)
) **Judge Patti B. Saris**
)

THIS DOCUMENT RELATES TO:
State of California, *ex rel.* Ven-A-Care v.
Abbott Laboratories, *et al.*
03-CV-11226-PBS

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**STATE OF CALIFORNIA'S OBJECTIONS AND RESPONSES
TO DEFENDANT ABBOTT'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, the State of California ("Plaintiff") provides these objections and responses to the combined Defendants First Set of Interrogatories ("Interrogatories").

Introductory Statement and General Objections

1. These Interrogatories are unclear, vague, and ambiguous to the extent they are directed jointly toward Plaintiff's "agents," reasonably construed to refer to the Relator, Ven-A-Care of the Florida Keys, Inc. ("Relator"). Plaintiff further objects to the extent it is unclear as to whether Defendants seek responses to particular Interrogatories from either Plaintiff or the Relator, or both. Plaintiff objects to each Interrogatory directed, in whole or in part, to the Relator. Plaintiff is not obligated to respond to any Interrogatory that is directed to the Relator. Accordingly, Plaintiff responds only to those Interrogatories, in whole or in part that appear to be directed toward Plaintiff.

2. These Interrogatories are unclear and confusing to the extent the Defendants' Definitions and Instructions in Defendants' First Set of Requests for Production are incorporated by reference in these Interrogatories. Notwithstanding this, Plaintiff incorporates, herein, the

The Department ensures it is in compliance with the aggregate payment levels required by 42 C.F.R. § 447.332 by implementing the Federal Upper Limit (FUL) prices provided by the Centers for Medicare and Medicaid Services (CMS) as listed in the State Medicaid Manual, Part 6, Payment for Services, Addendum A and subsequent changes made by CMS to Addendum A, on the implementation dates provided by CMS. The Department does not calculate the FUL and relies on the FUL prices provided in Addendum A change transmittals from CMS. There are no records of any proposed changes to the method of calculating the FUL being made by the Department.

INTERROGATORY NO. 15

Identify all Persons currently or formerly employed by You who were involved in any way in the preparation of assurance letters to the U.S. Government (including but not limited to Federal Agencies) representing that Your EAC as calculated was the best estimate of the prices that Providers were currently and generally paying for drugs and that your pharmacist reimbursement rates do not exceed in the aggregate, payment levels determined by applying for each drug entity a reasonable dispensing fee established by the agency plus an amount established by CMS that is equal to 150 percent of the published price for the least costly therapeutic equivalent.

RESPONSE:

Plaintiff objects to the extent the Interrogatory is vague and ambiguous as to the term “drug entity.” Plaintiff objects to the extent disclosure of personal information, including home addresses, of any current or former government employee is prohibited under federal and state privacy laws. Plaintiff objects to the extent this Interrogatory seeks information or documents protected by the attorney-client and deliberative process privilege. Plaintiff objects to the extent

this Interrogatory seeks information already provided in Plaintiff's initial disclosures. Subject to and without waiving its specific and general objections and its objections to Defendants' definitions and instructions, Plaintiff responds: The Medi-Cal fee-for-service (FFS) drug program does not provide reimbursement to individual pharmacists and therefore, has not established a pharmacist reimbursement rate. The Department establishes reimbursement rates for and provides reimbursement to pharmacy entities. That being said, the Medi-Cal FFS drug program does not provide assurance letters to the US Government representing that the EAC utilized by the Medi-Cal FFS drug program is the best estimate of prices that Providers are currently and generally paying for drugs. Rather, a State Plan Amendment (SPA) discussing reimbursement methodologies is submitted. Individuals who may have been formerly and are currently involved in the preparation, review, and submission of the SPA are as follows:

Individuals currently employed by the Department of Health Care Services (DHCS):

Kathleen Henry, AGPA
Pharmacy Policy Branch
Medi-Cal Pharmacy Benefits Division

James Kevin Gorospe, Pharm D
Pharmaceutical Program Consultant
Chief, Pharmacy Policy Branch
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Pilar Williams
Chief, Medi-Cal Pharmacy Benefits Division
Former Chief, Medi-Cal Contracting Section, DHS

Stan Rosenstein
Chief Deputy Director of Health Care Programs
Former Deputy Director, Medical Care Services, DHS

Toby Douglas
Deputy Director, Health Care Policy
Former Assistant Deputy Director, Medical Care Services, DHS

Sandra Shewry
Director, Medical Care Services

Individuals formerly employed by the DHCS, formerly known as the Department of Health Services (DHS):

Tom Ahrens, Pharm. D.
Former Pharmaceutical Consultant II (specialist)
Medi-Cal Contracting Section

Leonard Terra, RPh
Former Pharmaceutical Program Consultant
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Former Director, Medical Care Services

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The Medi-Cal FFS drug program does not perform calculations to determine whether in the aggregate pharmacy reimbursement exceeds payment levels determined by applying for each drug entity a reasonable dispensing fee plus the amount established by CMS that is equal to 150 percent of the published price for the least costly therapeutic equivalent and therefore, does not prepare any assurance letters to the US Government reporting such.

INTERROGATORY NO. 16

Identify all Persons currently or formerly employed by You or serving as a contractor to You with any knowledge that, at any time, the reimbursement for a pharmaceutical drug product based on AWP or Direct Price might result in reimbursement to a provider in excess of actual acquisition cost.

RESPONSE:

To the extent the Interrogatory seeks the identity of persons who had “knowledge” that a certain consequence “might result,” the Interrogatory is vague, ambiguous and calls for speculation. Plaintiff objects to the extent disclosure of personal information, including home addresses, of any current or former government employee is prohibited under federal and state privacy laws. Plaintiff objects to the Interrogatory to the extent the term “at any time” is overbroad and exceeds the scope of the allegations of the complaint. Subject to and without waiving its specific and general objections and its objections to Defendants’ definitions and instructions, Plaintiff responds:

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INTERROGATORY NO. 17

For each instance in which You claim that Defendants reported false or inflated prices for their products to First DataBank, as alleged in paragraph No. 43 of the Complaint; that Defendants utilized the spread to seize market share and fraudulently increase their profits, as alleged in paragraph No. 44 of the Complaint; and that Defendants gave Providers discounts, off invoice pricing, free goods, charge backs, volume discounts, credit memos, “consulting” fees, debt forgiveness, educational and promotional grants, and other financial incentives for dispensing Defendants’ Subject Drugs as alleged in paragraph No. 45 of the Complaint, please Identify each Person who has personal knowledge of the facts concerning the allegations in the Complaint; and describe all facts about which each such Person has knowledge.

RESPONSE:

Plaintiff objects to the extent this Interrogatory is premature because Plaintiff will rely on documents and material requested from, but not yet produced by, defendants to determine the actual acquisition costs for drugs and the amounts by which defendants inflated the reported prices upon which payment amounts were based. Plaintiff also objects to the extent this Interrogatory is a premature request for information that may be contained in Plaintiff’s subsequent disclosure and testifying experts’ reports that will be disclosed in accordance with Federal Rule of Civil Procedure 26 and any applicable scheduling orders. Plaintiff objects to the extent the Interrogatory seeks information already provided as part of Plaintiff’s Rule 26 Initial Disclosures. Plaintiff objects to the extent this Interrogatory seeks documents protected by the attorney-work product doctrine and attorney client privilege. Plaintiff objects to the extent the

calculated to lead to the discovery of admissible evidence. Subject to and without waiving its specific and general objections and its objections to Defendants' definitions and instructions, Plaintiff responds:

Any and all non-privileged documents responsive to this Interrogatory will be produced pursuant to Defendant's Request for Production of Documents served on Plaintiff on or about October 4, 2007.

INTERROGATORY NO. 32

Identify all current and former employees or agents that have testified, provided statements to, or been interviewed by agencies of other states; CMS; NAMFCU; HHS; OIG; DOJ; the GAO; Congress; or any other federal or state institution, agency, department, or office regarding AWP, Direct Price, the pricing of prescription drugs, the methodologies for reimbursing prescription drugs since the inception of each Medical Assistance Program, or the establishment of EAC, including but not limited to the date(s) of the testimony, statement, or interview; the context of the testimony, statement, or interview (i.e., deposition, affidavit, and other responsive information.); the general subject matter of the testimony, statement, or interview; and all documents relating to such testimony.

RESPONSE:

Plaintiff objects to the extent the Interrogatory seeks information or documents protected by the attorney-client privilege, the work product doctrine, the common interest privilege, the consulting expert privilege, the law enforcement investigative files privilege, and the deliberative process privilege. To the extent the Interrogatory seeks information "since the inception of each Medical Assistance Program," the Interrogatory is overbroad, unduly burdensome, and goes beyond the time period covered in the Complaint, seeking information not relevant to any claim or defense and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving its specific and general objections and its objections to Defendants' definitions and instructions, Plaintiff responds:

The list of all current and former employees or agents that have testified, provided statements to, or been interviewed by agencies of other states; CMS; NAMFCU; HHS; OIG; DOJ; the GAO; Congress; or any other federal or state institution, agency, department, or office regarding AWP, Direct Price, the pricing of prescription drugs, the methodologies for reimbursing prescription drugs since the inception of each Medical Assistance Program, or the establishment of EAC, including but not limited to the date(s) of the testimony, statement, or interview; the context of the testimony, statement, or interview (i.e., deposition, affidavit, and other responsive information.); the general subject matter of the testimony, statement, or interview; and all documents relating to such testimony is as follows:

Individuals currently employed by the DHCS:

James Kevin Gorospe, Pharm D
Pharmaceutical Program Consultant
Chief, Pharmacy Policy Branch
Medi-Cal Pharmacy Benefits Division

Pilar Williams
Chief, Medi-Cal Pharmacy Benefits Division
Former Chief, Medi-Cal Contracting Section, DHS

Stan Rosenstein
Chief Deputy Director of Health Care Programs
Former Deputy Director, Medical Care Services, DHS

Toby Douglas
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Individuals formerly employed by the DHCS:

Tom Ahrens, Pharm. D.
Former Pharmaceutical Consultant II (specialist)
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Leonard Terra, RPh
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Mike Neff
Former Chief, Medi-Cal Contracting Section
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Jan Howard
Former Chief, Medi-Cal Contracting Section
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Marianne Lewis
Former Branch Chief, Medi-Cal Benefits Branch
Former Section Chief, Medi-Cal Contracting Section
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Roberto Martinez
Former Chief, Medi-Cal Policy Division

Doug Porter
Former Chief Deputy Director, Medical Care Services

Gail Margolis, Esq.
Former Deputy Director, Medical Care Services

Kimberly Belshé
Former Director, Medical Care Services

Contractor:
George Pennebaker, Pharm D
EDS Pharmacist Consultant
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INTERROGATORY NO. 33

Identify the fact and expert witnesses that You intend to call at trial and the area(s) of their testimony.

RESPONSE:

Plaintiff objects to the extent this Interrogatory is a premature request for information that may be contained in Plaintiff's subsequent disclosure and testifying experts' reports that will be disclosed in accordance with Fed. R. Civ. P. 26 and any applicable scheduling orders. Plaintiff objects to the extent this Interrogatory is premature and unreasonable at this early stage of discovery, before Defendants have responded to all of Plaintiff's discovery requests, before all depositions have been taken and before third-party discovery has commenced. Subject to and without waiving its specific and general objections and its objections to Defendants' definitions and instructions, Plaintiff responds:

Plaintiff will identify such witnesses in accordance with the dates and deadlines as established by the Case Management Order entered in this case.

INTERROGATORY NO. 34

Describe whether and how You used the Average Sales Price information or any other pricing letters that You received from certain pharmaceutical manufacturers and whether and how You use AMPs provided to you from defendants or from other sources, such as the federal government.

RESPONSE:

Plaintiff objects to the extent the Interrogatory seeks information or documents protected by the deliberative process privilege. Plaintiff objects to the extent the Interrogatory is vague and ambiguous as to the term "received from certain pharmaceutical manufacturers." To the extent

Interrogatory purports to require Plaintiff to draw pure conclusions of law. Plaintiff also objects to the extent this Interrogatory is premature and unreasonable at this early stage of discovery, before Defendants have responded to all of Plaintiff's discovery requests, before all depositions have been taken and before third-party discovery has commenced. Subject to and without waiving its specific and general objections and its objections to Defendants' definitions and instructions, Plaintiff responds:

Plaintiff will respond to this specific Interrogatory once the necessary discovery is completed.

INTERROGATORY NO. 39

Identify all persons with personal knowledge of any decision to rely or not to rely upon WAC, AWP, FAC, FUL, MAIC, MAC, Direct Price, Best Price, AMP or Acquisition Cost in determining Medicaid-related reimbursements for Defendants' Subject Drugs.

RESPONSE:

Plaintiff objects to the extent this Interrogatory is unduly burdensome given the number of current and former employees at DHCS. Plaintiff objects to the extent the term "all persons with personal knowledge" is vague and ambiguous. To the extent the Interrogatory seeks information from persons not in the employ of DHCS and refers to "Medicaid-related reimbursements" not related to Medi-Cal, the Interrogatory is overbroad and seeks information not relevant to any claim or defense and not reasonably calculated to lead to the discovery of admissible evidence. Further, the Interrogatory is overbroad to the extent it seeks current contact information (including residence) for former or current employees of Plaintiff who should be contacted through counsel for Plaintiff. Disclosure of personal information, including home addresses, of any current or former government employee is prohibited under federal and state

privacy laws. Plaintiff objects to the extent this Interrogatory requests information under seal pursuant to Section 12652 of the California Government Code. Plaintiff objects to the extent the Interrogatory seeks information subject to the deliberative process privilege. The process of developing policies, regulations and rules regarding reimbursement of drug purchases is an inherently pre-decisional and policy based process that includes requests for legal advice. Plaintiff objects to the extent the Interrogatory seeks information subject to the attorney-client, attorney work product and the law enforcement investigative privilege. Subject to and without waiving its specific and general objections and its objections to Defendants' definitions and instructions, Plaintiff responds:

All persons with personal knowledge of any decision to rely or not to rely upon WAC, AWP, FAC, FUL, MAIC, MAC, Direct Price, Best Price, AMP or Acquisition Cost in determining Medicaid-related reimbursements for Defendants' Subject Drugs are as follows:

1. California State Legislature and legislative staff involved in proposing and/or enacting statute directing Medi-Cal drug reimbursement rates.
2. Defendants' employees involved in the negotiation and implementation of signed state supplemental rebate agreements whereby the amount of the state supplemental rebate paid is based on the net cost of the drug to the Medi-Cal program.

3. Individuals currently employed by the DHCS:

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Former Chief, Medi-Cal Contracting Section, DHS

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Former Deputy Director, Medical Care Services, DHS

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Karen Fairgrievies
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4. Individuals formerly employed by the DHCS, formerly known as the DHS:

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Marianne Lewis
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INTERROGATORY NO. 40

Identify all employees and agents of the State who have had access to the Unit Rebate
Amounts for Defendants' drugs.

CERTIFICATE OF SERVICE

I, Nicholas N. Paul, hereby certify that on December 21, 2007, I caused a true and correct copy of the foregoing to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Nicholas N. Paul
NICHOLAS N. PAUL
Supervising Deputy Attorney General